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Case No. 87-88

IN THE

Supreme Court of the United States

OCTOBER TERM 1987

PATRICIA MABRY,

Petitioner,

v.

STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION and GORDON DICKINSON, ROSS FORNEY, ANGELO DAURIO, DR. ELINOR GREENBERG, THOMAS GRIMSHAW, RAYMOND GUERRIE, ISAIAH KELLY, JR., FRED VALDEZ, SR., RAYMOND WILDER, all members of the State Board for Community Colleges and Occupational Education, and THOMAS SULLIVAN, President of Trinidad State Junior College,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

DANIEL R. SATRIANA, JR.
ALAN EPSTEIN
of HALL & EVANS
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34 pp

QUESTIONS PRESENTED

Whether the district court's conclusion that Plaintiff's reduction in force was not the result of unlawful sex discrimination under Title VII barred relitigation of this issue under Title IX.

Whether Plaintiff taught courses in programs or activities that received federal financial assistance within the meaning of Title IX.

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INTRODUCTION

The procedural and factual background of this case is fully explained in the Tenth Circuit Court of Appeals opinion, 813 F.2d 311, and will not be repeated at length herein. Generally, Mabry's complaint alleged that her nonrenewal by Defendants violated Title VII, 42 U.S.C. §2000e to §2000e-17 (1982), Title IX, 20 U.S.C. §§1681-1686 (1982), and its implementing regulations, and 42 U.S.C. §1983 (1982). The district court dismissed Mabry's Title IX and §1983 claims on the grounds that the instructional program areas in which she taught were not education programs or activities which received federal financial assistance within the meaning of Title IX, and that the availability of complete remedial devices under Title IX precluded her remedy under 42 U.S.C. §1983. See 597 F.Supp. 1235.

Mabry's Title VII claim was then tried to the court, which found that illicit consideration of her sexual identity did not occur, and further found that the reasons stated for her termination were not pretextual. On appeal, Defendants contended, *inter alia*, that the district court's unappealed finding that Mabry's nonrenewal was not the result of sex discrimination prohibited by Title VII necessarily precluded relitigation of her Title IX claim. Critical to the Tenth Circuit's opinion is its interpretation of 34 C.F.R. §106.57 (1986), a Federal regulation implementing Title IX. Defendants submit that the Tenth Circuit's interpretation of this Federal regulation does not warrant certiorari review by this Court.

REASONS FOR NOT GRANTING THE PETITION

THE TENTH CIRCUIT OPINION DOES NOT INVALIDATE 34 C.F.R. §106.57(a)(2) (1986).

It is important to note that Mabry has mischaracterized the holding of the Tenth Circuit's opinion in her framing of the issue presented for review. Mabry states that the Tenth Circuit opinion invalidates 34 C.F.R. §106.57(a)(2) (1986). However, the Tenth Circuit opinion does not invalidate this regulation; it only interprets the regulation in its Title IX context and in a manner consistent with its purpose which, necessarily, results in preclusion of Mabry's Title IX claim.

34 C.F.R. §106.57 states:

> (a) General. A recipient shall not apply any policy or take any employment action:
>
> > (1) concerning the potential marital, parental or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or
> >
> > (2) which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

The thrust of Mabry's argument in her petition for certiorari is that only gender based discrimination referenced in subsection (1) is the type of discrimination prohibited by Title VII and that subsection (2) discrimination is not covered by Title VII. Under Plaintiff's reasoning, if "head of household" discrimination is not illicit discrimination prohibited by Title VII, then the district court's finding that her nonrenewal was not gender-based does not preclude her Title IX claim. This reasoning is flawed for several reasons.

In the first instance, "head of household" rules which result in a gender-based discriminatory impact are prohibited by Title VII. *See George* v. *Farmers Electric Cooperative, Inc.*, 715 F.2d 175 (5th Cir. 1983); *Wambhiem* v. *J.C. Penny Co.*, 642 F.2d 362 (9th Cir. 1981); *E.E.O.C.* v. *Fremont Christian School*, 609 F.Supp. 344 (N.D. Cal. 1984), *aff'd* 781 F.2d 1362 (9th Cir. 1986). Therefore, the conduct prohibited under subsection (2) would be cognizable under Title VII assuming it results in sex discrimination.

Moreover, Mabry's attack on the Tenth Circuit's opinion actually results in a conclusion which is in accord with the Court's reasoning. The Tenth Circuit's opinion held that 34 C.F.R. §106.57(a)(2) (1986) may not be read in a vacuum, but must be reasonably related to the purposes of Title IX. *See Guardians Association* v. *Civil Service Commission*, 103 S.Ct. 3221, 3254 (1983). Hence, the Tenth Circuit held that subsection (2) cannot be interpreted to prohibit employment based on an individual's status as head of household or principal wage earner without regard to whether the action treats persons differently on the basis of sex. Since Title IX prohibits discrimination on the basis of sex, subsection (2) cannot prohibit conduct which does not result in sex discrimination. 813 F.2d at 315-316.

Mabry asserts in her petition for certiorari that the Tenth Circuit's conclusion in this regard is erroneous. Thus, Mabry at first appears to be arguing that she has stated a cause of action under Title IX by showing that her nonrenewal was based, in part, on the fact that she was single and the other two faculty members were the heads of households, without regard to whether this distinction was the result of sex discrimination. This must necessarily be her position if she is disagreeing with the Court's opinion. However, Mabry actually reaches the indentical conclusion as the Tenth Circuit. After stating that the court's opinion

invalidates subsection (2) by its holding that is cannot prohibit conduct which does not result in sex discrimination, Mabry goes on to argue that Defendants' conduct in this instance *did* result in sex discrimination. She states:

> More importantly, the regulation is manifestly reasonable. One need not reach beyond the first decision of this Court concerning sex discrimination in employment to demonstrate that head of household categorizations generally reflect sex-stereotyping . . .

(Petitioner's petition for writ of certiorari at pages 13-14.) Thus, Mabry argues in a circle. Her premise is that the Tenth Circuit's opinion invalidates subsection (2), yet her conclusion is precisely the same as the Tenth Circuit's conclusion: that subsection (2) must prohibit sex discrimination to be valid under Title IX.

It is submitted by Defendants that the Tenth Circuit properly held that the type of conduct prohibited by subsection (2) must result in sex discrimination to serve as the basis for a cause of action under Title IX since a regulation cannot impose a standard broader than that imposed by the legislation pursuant to which it was implemented. *See Cannon* v. *University of Chicago,* 648 F.2d 1104, 1109 (7th Cir. 1981) *cert. denied,* 102 S.Ct. 981 (1981). If subsection (2) prohibits conduct which results in sex discrimination based upon "head of household" status, then Plaintiff's Title IX claim is barred because the district court found that her nonrenewal was not the result of sex discrimination. *See Butler* v. *Pollard,* 800 F.2d 223 (10th Cir. 1986).

Finally, it should be noted that the only evidence referenced by Mabry which indicated that her nonrenewal was based upon the "head of household" status of her two male colleagues was that Thomas Sullivan, the president of Trinidad State Junior College, stated in his deposition that

Mabry's availability to enroll in out of state courses relating to physical education was affected by the fact that Mabry was single with no children. (See Sullivan deposition, appendix to Petitioner's Petition for Certiorari.) It is otherwise undisputed that Mabry's nonrenewal was the result of a reduction in force proceeding authorized by State Board policy and Colorado statutes, and that the two male colleagues who were retained were considered by Defendants to be equally competent in ability to Mabry. Assuming that this consideration by Sullivan was actionable under subsection (2) of 34 C.F.R. §106.57 (1986), then it would have to be actionable regardless of gender-based discrimination. Clearly, it was irrelevant that Mabry was female and her two male colleagues were male. The necessary implication of Sullivan's deposition testimony is that, as heads of households, nonrenewal would effect a more grievous impact on them and their families than on Mabry, since she was single. Thus, it is her marital status which may have been implicated in the nonrenewal decision. It was entirely irrelevant to this decision that Mabry is a woman. A single man would have suffered the same fate under Sullivan's "head of household" considerations.

It is respectfully submitted by Defendants that the opinion rendered by the Tenth Circuit is eminently reasonable in light of the purpose of Title IX. In fact, careful analysis of Mabry's argument reveals that she agrees with the Court's opinion. Hence, certiorari review is inappropriate. U.S. Sup. Ct. Rule 17, 28 U.S.C.

Plaintiff Did Not Teach Courses in Programs or Activities That Received Federal Financial Assistance, as Contemplated by Title IX.

Because Mabry's Title IX claim is precluded by the district court's finding that she had not shown that Defendants' conduct was actionable under Title VII, this Court

need not address the issue of whether the courses taught by Mabry constituted an education program or activity receiving federal financial assistance. However, assuming Mabry's claim was not barred by the doctrine of collateral estoppel, the district court properly found that the instructional program areas in which Mabry taught were not education programs or activities which received federal financial assistance within the meaning of Title IX.

It has been settled law since 1982 that 20 U.S.C. §§1681 and 1682 are "program-specific." (*North Haven Board of Education* v. *Bell,* 102 S.Ct. 1912, 1926 (1982)) Section 1681 provides, *inter alia*:

> (a) No person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any *education program or activity receiving Federal financial assistance.* . . .

(emphasis added) Section 1682, as pertinent here, authorizes Federal departments and agencies which extend Federal financial assistance to education programs or activities:

> to effectuate the provisions of Section 1681 of this Title *with respect to such program or activity* by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.

(emphasis added) The underscored language in these sections was interpreted in *North Haven, supra,* to impose two complementary restrictions on the otherwise broad sweep of Title IX. First, §1681(a) prohibits gender discrimination only in *specific* "education programs or activities receiving Federal financial assistance." Second, the regulatory

authority delegated to the Department of Education by §1682 extends only to the same *specific* federally-assisted education programs and activities. Thus, the *North Haven* court concluded that Title IX and implementing regulations apply "only to programs that receive Federal funds". (*North Haven*, 102 S.Ct. at 1926, n. 27)

In *Grove City College* v. *Bell*, 104 S.Ct. 1211 (1984), the Supreme Court rejected the Third Circuit's conclusion that because Grove City College as a whole "benefited" from the Basic Education Opportunity Grants (BEOGs) awarded to its enrollees, it was itself tantamount to "an education program or activity receiving federal financial assistance." Instead, after finding that BEOGs constituted "Federal financial assistance" within the meaning of Title IX, the Court ruled that only the college's student financial aid program "received" the assistance.

> We conclude that receipt of BEOGs by some of Grove City's students *does not trigger institution-wide coverage under Title IX*. In purpose and effect, *BEOGs represent federal financial assistance to the College's own financial aid program*, and it is that program that may properly be regulated under Title IX.

(*Grove City*, 104 S.Ct. at 1222 (emphasis added))

In reaching this conclusion, the court disposed of any arguments Plaintiff could plausibly advance to support her conclusion that Title IX and its implementing regulations shielded her from the gender-based employment discrimination she has alleged. It is true that several education programs and activities operated by the State Board and TSJC in 1981 and 1982 received federal financial assistance within the meaning of Title IX. (*See*, Tarabino Affidavit, Appendix) On the one hand, students attending the college received BEOGs, supplemental educational opportunity

grants and other federal student aid funds which the *Grove City* Court characterized or in all likelihood would have characterized as "federal financial assistance." On the other hand, certain programs and activities operated by the Board and TSJC received direct, earmarked federal grant-in-aid funding (*id.*) which, Defendants readily concede, constituted "Federal financial assistance" for the purposes of §§1681 and 1682 and their implementing regulations. However, acknowledging that students at the college received federal grants and other financial aid and that certain programs and activities operated by the Board and Trinidad State Junior College received direct, earmarked federal funds does not end the inquiry whether Title IX and its implementing regulations covered Plaintiff's employment as a physical education, speech, and first aid instructor. As the Supreme Court observed in *Grove City*:

> [T]here remains the question . . . of identifying the 'education ~~program~~[s] or activit[ies]' of the College that can *properly be characterized* as 'receiving' federal financial assistance. . . .

(104 S.Ct., at 1220 (emphasis added)) Only if Plaintiff were "excluded from participation in, . . . denied the benefits of, or . . . subjected to discrimination in employment under . . . " such a program, would either §1681 or its implementing regulations proscribing sex discrimination in employment authorize the relief she has requested under Title IX. *(See North Haven Board of Education* v. *Bell,* 102 S.Ct. at 1926-27 and 1927, n.30; 34 C.F.R. 106.11 and 106.51)

Unlike the airline in *Tudyman* v. *United Airlines,* 608 F. Supp. 739 (C.D. Cal. 1984), TSJC has since 1979 apportioned the college's instructional activities among discrete, clearly delineated "program areas." (*See* Sullivan Affidavit, Appendix) It is undisputed that Plaintiff was employed to

teach in the Physical Education and Languages program areas and to teach a first aid course. (*Id.*) Nor is it disputed that Federal financial assistance was never at any time relevant to this lawsuit designated for, allocated to or otherwise expended in connection with the Physical Education or Languages program areas or the first aid course. (*See* Tarabino, Schubert, and Raak Affidavits, Appendix). Neither the State Board nor TSJC, moreover, received any unrestricted or nonearmarked Federal funds (*id.*) capable of triggering institution-wide Title IX coverage. (*Cf. Arline* v. *School Board of Nassau County*, 772 F.2d 759 (11th Cir. 1985) (receipt of unrestricted federal impact aid by school board triggers system-wide coverage under §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794); *Henning* v. *Village of Mayfield Village*, 610 F. Supp. 17 (N.D. Ohio 1985) (receipt of unrestricted federal revenue sharing funds triggers village-wide §504 coverage))

Mabry nevertheless contends that she was employed in a "program or activity receiving Federal financial assistance" because earmarked federal funding for certain programs at the college "overlapped" and "affected" instructional activities in physical education, speech, and first aid. At the heart of her argument are TSJC's "core" graduation requirements: students seeking degrees in certain programs receiving earmarked federal monies were required by the college to complete three quarter hours in physical education courses and/or to take courses in speech or first aid. (*See* Affidavit of Patricia Mabry, Appendix to Petition for Certiorari, p.66) Since students participating in these directly benefitted programs had to take courses in the program areas in which she taught, Plaintiff concludes that her program areas were indirectly benefitted by the earmarked assistance and, like Grove City College's financial aid program, should properly have been characterized by

the District Court as "program[s] . . . receiving Federal financial assistance" for Title IX purposes.

Defendants submit that this nexus between the earmarked federal grants received by the college and Plaintiff's instructional duties is far too attenuated to trigger Title IX coverage of the Physical Education and Languages program areas or her first aid course.

It is true that indirect as well as direct Federal funding may constitute "Federal financial assistance" within the meaning of Title IX. (*See Grove City College* v. *Bell*, 104 S.Ct. at 1216-20) It is also true, however, that not all indirect benefits traceable to direct federal grants extend the coverage of the statute or its implementing regulations to the indirectly benefitted programs. The *Grove City* Court rejected as inconsistent with Title IX's program-specific language the Third Circuit's assumption that the statute and regulations could be applied to an entire institution because the "economic ripple effect" of an earmarked federal grant received by one department indirectly benefitted the school as a whole. (*Id.* at 1221) The Court's reasoning is equally applicable to Plaintiff's claim that Title IX's intrainstitutional coverage should extend to her program areas and course because each indirectly benefitted from the economic ripple effects of direct, earmarked federal grants to other college programs and activities.

Even more tellingly, the *Grove City* Court undertook the task of "identifying the 'educational program or activity' . . . that can properly be characterized as 'receiving' federal assistance . . . ," (*id.* at 1220) by inquiring whether the aid was "in purpose and effect", (*id.* at 1222) Federal financial assistance to that program. Plaintiff must therefore be understood to be arguing that, because of the link supplied by the college's core graduation requirements, earmarked federal grants received by the programs listed in

Exhibit A to Tarabino affidavit were "in purpose and effect" Federal assistance to TSJC's instructional programs in physical education, languages, and first aid. This contention will not withstand even cursory scrutiny. First, any nexus between the earmarked grants received by TSJC and the programs in which Plaintiff was employed to teach is far more tenuous than the connection between student financial aid awards disbursed directly to students and an institution's in-house student financial aid program. As the *Grove City* Court noted, the BEOG grants to students at the school were intended by Congress to "effectively supplement [] the college's own financial aid program [footnote omitted]." (*Id.* at 1217) No such Congressional purpose to supplement or assist Plaintiff's program areas can be inferred from TSJC's unilateral curriculum decision that students in certain other programs, including several receiving earmarked Federal grants, have to take physical education, speech, and/or first aid courses to graduate.

Second, Plaintiff's argument that the student beneficiaries of earmarked Federal grants acted as a conduit extending indirect "Federal financial assistance" and hence Title IX coverage to her program areas cannot be squared with *Grove City's* admonition that there is "no persuasive evidence suggesting that Congress intended the Department's regulatory authority [to] follow federally aided students from classroom to classroom, building to building, or activity to activity." (*Id.* at 1222) Since the Court noted that "student financial aid . . . closely resembles many earmarked federal grants," (*Id.*) it is equally implausible to suppose that Congress intended Title IX coverage to follow earmarked grants' student beneficiaries into each course or activity their college required for graduation.

In short, as the District Court recognized, Title IX's program specific restrictions cannot be conjured away merely by pointing to some kind of connection or link

between earmarked federal financial assistance and otherwise unassisted educational programs or activities. Under *Grove City*, it is the "purpose and effect" of the Federal aid — be it BEOG's or earmarked grants — that identify the specific "program" Congress intended to protect. Plaintiff's assertion that earmarked Federal grants which directly or incidentally benefit a college's students are "in purpose and effect" Federal financial assistance to every instructional program in its core curriculum is inconsistent with both the program-specific language of Title IX and the Court's reasoning and conclusions in *Grove City*.

The District Court's decision in this case is supported by decisions in subsequent Title IX and §504 cases.

In *O'Connor* v. *Peru State College*, 605 F. Supp. 753 (D. Neb. 1985), *aff'd* 781 F.2d 632 (8th Cir. 1986), the Court held that no Title IX coverage existed where the plaintiff taught in the physical education division at Peru State College although the college received Title III grants to support faculty and student research projects which were used to fund a physiology laboratory to which the physical education division had access. (605 F. Supp. at 760-61) In the present case, the nexus between "Federal financial assistance" and the program areas in which Plaintiff taught is even weaker since Mabry had not taught in program areas of TSJC which received "Federal financial assistance" in any form and there has been no showing that the receipt of "Federal financial assistance" by other program areas of the school was for the purpose of benefitting the program areas in which Mabry taught.

Moreover, in those cases in which §504 coverage has been extended to particular programs or activities that were not themselves the direct recipients of federal financial assistance, the courts have emphasized the "direct and tangible" contributions made by the covered program to the

recipient's eligibility for the assistance in question. (*See Frazier* v. *Board of Trustee of Northwest Mississippi Regional Medical Center*, 765 F.2d 1278, 1290 (5th Cir. 1985); *United States* v. *Baylor University Medical Center*, 736 F.2d 1039 (5th Cir. 1984) *cert. denied* 105 S.Ct. 958 (1985)) Plaintiff here does not and cannot contend that the instruction offered by the program areas in which she taught was the *sine qua non* or even a substantial factor in the State Board's or TSJC's receipt of earmarked Federal funds for entirely unrelated programs.

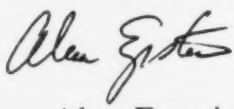
Therefore, since neither the State Board nor TSJC received unrestricted Federal funding or Federal funding which was designated for, allocated to, or otherwise expended in, the program areas in which Mabry taught, the District Court's Order dismissing Mabry's Title IX claim should be affirmed.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court deny Mabry's petition for certiorari.

Respectfully submitted,

Daniel R. Satriana, Jr.



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Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari has been placed in the United States Mail, postage prepaid, this 14 day of August, 1987, addressed to:

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Case No. 87-88

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1986

PATRICIA MABRY,

Petitioner,

v.

STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION and GORDON DICKINSON, ROSS FORNEY, ANGELO DAURIO, DR. ELINOR GREENBERG, THOMAS GRIMSHAW, RAYMOND GUERRIE, ISAIAH KELLY, JR., FRED VALDEZ, SR., RAYMOND WILDER, all members of the State Board for Community Colleges and Occupational Education, and THOMAS SULLIVAN, President of Trinidad State Junior College,

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APPENDIX TO
BRIEF OF RESPONDENTS IN OPPOSITION TO
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APPENDIX 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 83 K 852

PATRICIA MABRY,

Plaintiff,

vs.

THE STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION, and GORDON DICKINSON, ROSS FORNEY, ANGELO DAURIO, DR. ELINOR GREENBERG, THOMAS GRIMSHAW, RAYMOND GUERRIE, ISAIAH KELLEY, JR., FRED VALDEZ, SR., RAYMOND WILDER, all members of the State Board of Community Colleges and Occupational Education, and THOMAS SULLIVAN, President of Trinidad State Junior College,

Defendants.

AFFIDAVIT OF JOHN TARABINO

John Tarabino, being first duly sworn, deposes and states as follows:

1. I am employed as Dean of Administration at Trinidad State Junior College, and have been employed in that position at all times relevant to the above-captioned civil action.

2. As Dean of Administration, I am the chief financial officer of Trinidad State Junior College and have responsibility for the business operation of the College, responsibilities for the budgetary function, and administration of the physical plant operation at the College.

3. During the time period January 1, 1981, through August 11, 1982, no unrestricted financial assistance from the United States Government was received by Trinidad State Junior College.

4. During the time period January 1, 1981, through August 11, 1982, no unrestricted financial assistance from the United States Government was received by Trinidad State Junior College through the State Board for Community Colleges and Occupational Education.

5. During the time period January 1, 1981, through August 11, 1982, no United States Government financial assistance was received by Trinidad State Junior College which was specifically designated for, or allocated to, the Physical Education or Languages instructional program areas or the Standard Red Cross First Aid and Personal Safety course at Trinidad State Junior College, and no United States Government financial assistance was allocated to or otherwise expended in those program areas or course during that period at Trinidad State Junior College.

6. During the time period January 1, 1981 through August 11, 1982, no United States Government financial assistance was received by Trinidad State Junior College through the State Board for Community Colleges and Occupational Education which was specifically designated for, or allocated to, the Physical Education or Languages instructional program areas or the Standard Red Cross First Aid and Personal

Safety course at Trinidad State Junior College, and no United States Government financial assistance was allocated to or otherwise expended in those program areas or course during that period at Trinidad State Junior College.

7. During the Trinidad State Junior College fiscal years ended June 30, 1981, June 30, 1982, and June 30, 1983, Trinidad State Junior College received financial assistance from the United States Government as listed on Exhibit A attached hereto.

8. During the period of January 1, 1981, through August 11, 1982, none of the funds received pursuant to the United States Government financial assistance for Trinidad State Junior College as listed on Exhibit A, attached, was used by Trinidad State Junior College to pay the salaries of instructors employed within the Physical Education or Languages instructional program areas or the Standard Red Cross First Aid and Personal Safety course at Trinidad State Junior College or allocated to or otherwise expended in those program areas or course.

FURTHER AFFIANT SAYETH NOT.

JOHN TARABINO

STATE OF COLORADO)
) ss.
COUNTY OF)

Subscribed and sworn to before me this 12th day of [illegible], 1984.

My Commission expires: _____

Notary Public

Address

EXHIBIT A

TRINIDAD STATE JUNIOR COLLEGE
SPONSORED PROGRAM ACTIVITIES
FISCAL YEARS ENDED JUNE 30, 1981, 1982, AND 1983

PROGRAM NAME	FY '81	FY '82	FY '83
Work Study (1)	$105,910.85	$116,048.50	$107,243.70
Supplemental Educational Opportunity Grant Initial (1)	$36,638.00	$34,357.00	$37,808.00
Supplemental Educational Opportunity Grant Renewal (1)	$10,190.00	$15,333.00	$15,432.00
Pell Grants (1)	$296,562.00	$288,168.00	$358,511.00
Leep Law Enforcement Education Program (1)	$164.00	$204.00	
Nursing Scholarship (1)	$609.00		
Health Services (1)			$7,140.66
Summer Lunch (1)			$841.24
Job Corp (3)	$288,405.08	$311,900.76	$130,287.75
Disadvantaged (2)	$14,026.64	$4,724.49	$5,721.46
Mining Tech (2)	$65,980.63	$36,200.79	$31,404.85
Work Incentive Program (3)	$144.60		
Upward Bound (1)	$108,664.37	$104,983.48	$135,170.70
Youth Conservation Camp (4)	$131.20		
Special Services (1)	$88,442.92	$90,779.13	$82,784.30
Title II College Library (1)	$7.06	$2,088.04	$167.41
Job Placement (2)	$2,061.45	$818.16	
Guidance (2)	$2,059.99		
Fire Service (2)	$510.00		$170.00
Homemaking (2)	$12,325.28	$10,044.02	$5,467.17
Adult Basic Education (1)	$13,859.12	$20,946.00	$18,432.00
Veteran Cost of Instruction (1)	$202.05	$196.70	$316.53
Title III Administration (1)	$56,016.32	$31,261.40	
Title III Learning Lab (1)	$54,409.56	$6,642.64	
Title III Curriculum (1)	$22,991.46		
Solar Adobe (5)	$1,764.57	$271.25	
Manpower (3)	$15.58		
Soil Conservation (2)	$4,815.17	$5,185.00	
Mining Equipment (2)		$29,574.00	
Homemaking (2)	$889.20	$3,000.00	
Vocational Energy Education (2)		$55,000.00	$41,000.00
Supplemental Equipment (2)		$1,500.00	
Chemistry (6)		$1,095.91	
Technical Assistance (5)		$17,117.00	
Cardio Pulmonary Resuscitation (2)	$4,990.30		
Total	$1,194,706.40	$1,187,439.27	$977,918.77

(1) Department of Health Education and Welfare
(2) State Board for Community Colleges and Occupational Education
(3) Department of Labor
(4) Department of Interior
(5) Department of Energy
(6) National Science Foundation

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 83 K 852

PATRICIA MABRY,

Plaintiff,

vs.

THE STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION, and GORDON DICKINSON, ROSS FORNEY, ANGELO DAURIO, DR. ELINOR GREENBERG, THOMAS GRIMSHAW, RAYMOND GUERRIE, ISAIAH KELLEY, JR., FRED VALDEZ, SR., RAYMOND WILDER, all members of the State Board of Community Colleges and Occupational Education, and THOMAS SULLIVAN, President of Trinidad State Junior College,

Defendants.

AFFIDAVIT OF THOMAS SULLIVAN

Thomas Sullivan, being first duly sworn, deposes and states as follows:

1. I am the same Thomas Sullivan who is a defendant in the above-captioned civil action.

2. I am employed in the position of President for Trinidad State Junior College and have been so employed during all times relevant to this civil action.

3. I have personal knowledge of all matters stated herein.

4. In November 1979, I formulated the instructional divisions at Trinidad State Junior College, and pursuant to

Colorado Revised Statutes, Title 23, Article 10, designated program areas within those divisions. These program areas were designated pursuant to C.R.S. 23-10-203 to enable the College to implement reductions in force, should such reductions in force become necessary.

5. One of the divisions is known as the Fine and Liberal Arts Division, and within that division is the Languages program area.

6. Another of the divisions is known as the Physical Education Division or Health, Physical Education and Recreation Division, and within that division is the Physical Education program area.

7. During the academic years 1980-81 and 1981-82 and subsequent, a course known as Standard Red Cross First Aid and Personal Safety was taught at Trinidad State Junior College. This course was not specifically designated as within any of the instructional divisions or program areas within those divisions, as formulated by me in November 1979.

8. During the 1981-82 academic year at Trinidad State Junior College, Plaintiff Patricia Mabry was employed as an instructor within the Physical Education program area. She also taught courses within the Languages program area and taught the Standard Red Cross First Aid and Personal Safety course.

FURTHER AFFIANT SAYETH NOT.

Thomas J. Sullivan

THOMAS SULLIVAN

STATE OF COLORADO)
) ss.
COUNTY OF Las Animas)

Subscribed and sworn to before me this 10th day of April, 1984.

My Commission expires: [illegible].

Notary Public

600 Prospect Street, Trinidad, CO. 81082
Address

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 83 K 852

PATRICIA MABRY,

Plaintiff,

vs.

THE STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION, and GORDON DICKINSON, ROSS FORNEY, ANGELO DAURIO, DR. ELINOR GREENBERG, THOMAS GRIMSHAW, RAYMOND GUERRIE, ISAIAH KELLEY, JR., FRED VALDEZ, SR., RAYMOND WILDER, all members of the State Board of Community Colleges and Occupational Education, and THOMAS SULLIVAN, President of Trinidad State Junior College,

Defendants.

AFFIDAVIT OF RICHARD SCHUBERT

Richard Schubert, being first duly sworn, deposes and states as follows:

1. I am employed in the position of Assistant Director, Fiscal Services for the Division of Community Colleges of the State Board for Community Colleges and Occupational Education for the State of Colorado.

2. I have personal knowledge of all matters stated herein.

3. During the period from January 1, 1981 through August 11, 1982, no unrestricted United States Government financial assistance was received by the Division of Community

Colleges of the State Board for Community Colleges and Occupational Education.

4. During the period from January 1, 1981, through August 11, 1982, no United States Government financial assistance was received by the Division of Community Colleges of the State Board for Community Colleges and Occupational Education which was specifically designated for, or allocated to, the Physical Education or Languages instructional program areas or the Standard Red Cross First Aid and Personal Safety course at Trinidad State Junior College.

FURTHER AFFIANT SAYETH NOT.

RICHARD SCHUBERT

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

Subscribed and sworn to before me this 10th day of April, 1984.

My Commission expires: April 23, 1985.

Notary Public

800 Washington, #606, Denver, Colorado 80203
Address

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 83 K 852

PATRICIA MABRY,

Plaintiff,

vs.

THE STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION, and GORDON DICKINSON, ROSS FORNEY, ANGELO DAURIO, DR. ELINOR GREENBERG, THOMAS GRIMSHAW, RAYMOND GUERRIE, ISAIAH KELLEY, JR., FRED VALDEZ, SR., RAYMOND WILDER, all members of the State Board of Community Colleges and Occupational Education, and THOMAS SULLIVAN, President of Trinidad State Junior College,

Defendants.

AFFIDAVIT OF KENNETH E. RAAK

Kenneth E. Raak, being first duly sworn, deposes and states as follows:

1. I am employed in the position of Assistant Deputy Director, Administrative Services Division for the Administrative Services Division of the State Board for Community Colleges and Occupational Education for the State of Colorado.

2. I have personal knowledge of all matters stated herein.

3. During the time period from January 1, 1981 through August 11, 1982, no unrestricted United States Government financial assistance was received by the Administrative

Services Division of the State Board for Community Colleges and Occupational Education.

4. During the period from January 1, 1981, through August 11, 1982, no United States Government financial assistance was received by the Administrative Services Division of the State Board for Community Colleges and Occupational Education which was specifically designated for, or allocated to, the Physical Education or Languages instructional program areas or the Standard Red Cross First Aid and Personal Safety course at Trinidad State Junior College.

FURTHER AFFIANT SAYETH NOT.

KENNETH E. RAAK

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

Subscribed and sworn to before me this 10th day of April, 1984.

My Commission expires: April 22, 1985.

Notary Public

800 Washington, #608, Denver, Colorado 80203
Address